next to him when he reached the C.I.D. with the police party. The learned district judge was entitled to reject this in view of the fact that the evidence showed that the said seat had been occupied by the police inspector in charge of the case immediately before the taxi reached the C.I.D. The other poem (Exhibit P4) was clearly found in his wallet. His conduct at the time he was seen holding Exhibit P3 in his hand also clearly indicated a guilty state of mind.

In my opinion it was not essential for his evidence to be analysed by the learned district judge as counsel contended should have been done on the authority of *Tan Ah Leng* v. *R.*[1] In that case the appellant had a tattoo mark of a secret society on his right arm. It should be noted that in that case Rigby J. was concerned with a case which involved a charge of being a member of an unlawful society where the prosecution had to depend on a presumption which is the equivalent of that contained in our section 15(1). Rigby J. no doubt stated that the learned magistrate in that case had made no attempt to analyse the defence story nor to set out the grounds upon which he considered that the defence had failed to rebut the presumption placed upon it. In the present appeal the prosecution were not concerned with any presumption or with proof of the appellant's being a member of any unlawful society. This was a pure and simple case as to whether the appellant was found to be in possession of these two poems. His defence was a bare denial of any knowledge of the existence of these poems and in the circumstances there was little in that evidence for the learned district judge to analyse although perhaps his reasons could have been stated more fully. In my opinion the appellant was correctly convicted.

I now turn to the question of the second charge on which he was acquitted of being a member of the *Ang Bin Hoey* triad society. I think I ought to mention that, in my opinion, the appellant is fortunate in that the charge against him was withdrawn. Apparently the reason for the withdrawal lies in the fact that the expert was asked whether he could say that the appellant was a member of the *Ang Bin Hoey* triad society. In reply, the expert said that he could not. In my opinion, the expert should not have been asked whether the appellant was a member of the *Ang Bin Hoey* triad society or not, as this was a matter which the court itself had to determine on the evidence of the finding of the writings in his possession and after considering the presumption arising under section 15(1) and the case as a whole. The expert was in no position to say whether or not the appellant was such a member. What he could and did say was that these poems were used by the *Ang Bin Hoey* triad society as part of its ritual. He could usefully have said nothing more on this subject.

A conviction for being found in possession of these poems under section 16(2) carries alternative penalties, i.e. a fine not exceeding $3,000 or imprisonment for a term which may extend to 3 years. He may be liable to both. As, however, he has been acquitted on the charge of membership of the society in question I think that I should impose the lesser punishment of a fine instead of confirming his sentence of imprisonment for 6 months. I accordingly substitute a fine of $1,500 or 6 months' imprisonment in default instead of the sentence of 6 months' imprisonment.

Appeal dismissed. Sentence reduced.

Solicitors: *Lee & Lee.*

RESHTY v. SYED AHMED AL-JUNIED & ORS.

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) April 6, 1966]

[Singapore — Federal Court Civil Appeal No. 111 of 1964]

Landlord and Tenant — Premises — Meaning of — Whether person who holds over after termination of contractual tenancy is a trespasser — Statutory tenancy — Order for mesne profits — Control of Rent Ordinance (Cap. 242), s. 15(1)(g).

This was an appeal from the judgment of Choor Singh J. ([1965] 1 M.L.J. 77). The respondents had claimed possession of certain lands comprising an area of 550 acres on the ground that the appellant had been receiving from the sub-tenants substantially more than 110% of the rent which she herself paid to the respondents. The learned trial judge gave judgment for the respondents on the claim for possession. He also held that the appellant on the expiry of the notice to quit became a trespasser and was liable to pay *mesne profits* to the appellant as damages for the loss they suffered; and he assessed the damages as all the rents the appellant had collected from the sub-tenants from the date of expiry of the notice to quit up to the date of the judgment.

Held: (1) the learned trial judge was correct in coming to the conclusion that the lands demised to the appellant were "premises" within the meaning of section 15(1)(g) of the Control of Rent Ordinance and in making an order for possession against the appellant;

(2) the acceptance of rent by respondents "without prejudice to the notice to quit" did not constitute a waiver by the respondents of their right to treat the appellant as a trespasser;

(3) the appellant could not be treated as a trespasser until an order for possession had been made against her and therefore the order for the payment of *mesne profits* must be set aside.

[Editorial Note: The Honourable the Lord President who presided at the hearing of the appeal did not sit in the Federal Court when it delivered the reserved judgment in Singapore.]

Cases referred to:—

(1) *Segal Securities Ltd.* v. *Thoseby* [1963] 2 W.L.R. 403.

(2) *Matthews* v. *Smallwood* [1910] 1 Ch. 777.

(3) *Ida Fernandez* v. *Murugiah* [1950] M.L.J. 83.

(4) *K. S. Mohamed Ismail* v. *Choo Pin* [1954] M.L.J. 183.

(5) *Cruise* v. *Terrell* [1922] 1 K.B. 664.

(6) *Remon* v. *City of London Real Property Co.* [1921] 1 K.B. 54.

(7) *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* [1964] M.L.J. 71, F.C.

(8) *Ramasamy Pillai* v. *Meyappa Chettiar* [1955] M.L.J. 105.

FEDERAL COURT.

J. Grimberg for the appellant.

C. L. Duff for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (Singapore): This appeal arises out of a claim by the respondents, as trustees under the will of Syed Ahmed bin Abdulrahman Alsagoff, deceased, for the recovery of possession of certain lands comprising an area of some 550 acres on which were erected with the assent of the respondents over 2,000 temporary buildings by persons to whom small portions of the land were sublet as vacant land by the appellant. There was also a claim for *mesne profits*.

Both parties by their pleadings and before this court were in agreement that the subject matter of the action was premises within the definition of "premises" in section 2 of the Control of Rent Ordinance (Cap. 242) (hereinafter referred to as "the Ordinance") and therefore controlled premises.

The claim for recovery of possession was based on a number of grounds, one of them being that the appellant as tenant of the respondents had been receiving from the sub-tenant substantially more than 110% of the rent which she herself paid to the respondents.

Section 15(1)(g) of the Ordinance enables a landlord to recover possession of controlled premises:

"Where the tenant having sublet the premises or part thereof receives in respect of such subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him."

At the trial counsel for the appellant, while conceding that the appellant had been receiving rents in excess of 110% of the rent she paid to the respondents, contended that on its true construction section 15(1)(g) was not applicable on the undisputed facts of the case. His argument at the trial is set out in the judgment of trial judge as follows:—

"He argued that 'premises' is the key word in paragraph (g) and the definition of 'premises' appearing in section 2 of the Ordinance is governed by the expression "except where the context otherwise requires" appearing in the opening words of section 2. Counsel argued that the context of section 15(1)(g) requires a definition of premises more limited than that given in section 2; that it clearly contemplates premises as being a building part of which is sublet by a tenant and part of which is retained by him for his own use; and that reference to municipal services in paragraph (g) lends colour to that view. Counsel asked, can the expression 'premises' in the context of section 15(1)(g) refer to 550 acres of land occupied by some 2,100 sub-tenants?

It was suggested that the test is, what mischief was section 15(1)(g) enacted to prevent? Counsel contended that it was enacted to prevent a chief tenant of a building who keeps a room and rents the rest of the building by sub-dividing it into cubicles from charging rents for the cubicles which in the aggregate exceed 110% of the rent paid by the chief tenant. Counsel contended that the present case was on an entirely different footing and section 15(1)(g) of the Ordinance had no application.

It was submitted further that the defendant's tenancy of the land in question was in the nature of a business; she employed staff, to wit, a manager and rent collectors to collect rent from the 2,100 sub-tenants; she paid $12,120 per annum as wages to her staff; she paid $3,000 per annum as assessment; she paid $6,000 per annum as income tax on the rents collected by her from the sub-tenants; and she paid the plaintiffs $16,800 per annum as rent. And there remained about $2,000 per mensem for her when all these payments had been made. It was submitted that the tenancy was in the nature of an investment for the defendant and she was carrying on the business of rent collecting and section 15(1)(g) of the Ordinance did not apply to the land."

The trial judge came to the conclusion that the lands demised to the appellant were "premises" within the meaning of section 15(1)(g) and made an order for recovering of possession forthwith against the appellant.

Counsel for the appellant pressed the same arguments before this court but in my opinion the point is without any substance.

Clearly the mischief the legislature intended to prevent by section 15(1)(g) was to withdraw the protection given by the Ordinance to all tenants of controlled premises from those tenants who under cover of this protection, by sub-letting the whole or parts of the premises made a profit at the expense of the landlord. On the facts of this particular case the appellant as tenant of the respondents, was benefiting, merely by subletting small portions of the "premises" to others, to the extent of some $2,000 per month at the expense of the respondents. It seems to me that it does not matter whether the "premises" is a building or is land on which a building or buildings have been erected and so long as it can be proved that a tenant of "premises" as defined by section 2 receives rents from sub-tenants in excess of the amount permitted by section 15(1)(g) an order or judgment for recovery of possession may be made.

Another argument was pressed before us why on the facts of this case the respondents were not entitled to rely on section 15(1)(g). It is contended that the trial judge, having found

that the standard rent was $750 p.m. and that the respondents had thereby, in receiving rent of $1,300 p.m. from April 8, 1955 to March 31, 1958 and $1,400 p.m. from April 1, 1958 to March 31, 1961 without obtaining the prior sanction of the Rent Conciliation Board, contravened the provisions of section 3 of the Ordinance, he had erred in law in making an order for possession under section 15(1)(g). I am not impressed by this argument. On the facts the increases albeit contrary to section 3, were freely negotiated.

The position may well be different had the action for recovery of possession been based on the fact that the appellant, although she was receiving rents from her sub-tenants well within the maximum amount permitted by section 15 (1)(g) if the recoverable rent was $1,400 p.m., had contravened section 15(1)(g) as the true recoverable rent was $750 p.m. by reason of the fact that no application had been made to the Rent Conciliation Board to sanction the increases agreed upon by the parties. If those were the facts no court I would venture to think would have made an order for possession under section 15(1)(g) but as I have said the facts in the present case were entirely different.

The other grounds of appeal relate to the claim by the respondents for *mesne profits*. Choor Singh J. held that the appellant on the expiry of the notice to quit became a trespasser and as *mesne profits* are damages for the tort of trespass, he held that the respondents were entitled to recover as *mesne profits* the damages they had suffered through being out of possession of the land. He assessed the damages as all the rents the appellant had collected from her sub-tenants from the date of the expiry of the notice to quit up to the date of the judgment.

It is argued that when the respondents accepted rents tendered after the expiry of the notice to quit on 31st March 1961, although such acceptance was qualified by stating that the acceptance was "without prejudice to the notice to quit", the appellant cannot in law be a trespasser on the ground that the respondents, by such acceptance had waived their right to treat the appellant as a trespasser. The case relied on for this proposition is *Segal Securities Ltd.* v. *Thoseby.*[1] In that case Sachs J. said it was accepted law since the classic judgment of Parker J. in *Matthews* v. *Smallwood,*[2] that acceptance of rent although "without prejudice" by a landlord with knowledge of a breach of covenant entitling him to forfeiture constitutes as a matter of law a waiver of the breach. But Sachs J. went on to say at page 411:—

> "It is thus a matter of law that once rent is accepted a waiver results. The question of *quo animo* it is accepted in forfeiture cases is irrelevant in relation to such acceptance. (I would mention that of course that is not so where the acceptance of rent has to be considered after the expiry of a lease by effluxion of time or notice — a distinction which has been adverted to in more than one authority.)"

In my opinion in this case the question of *quo animo* the rent is accepted is relevant in relation to such acceptance. Choor Singh J. made no specific finding on this as the point of waiver was not taken before him, but had it been, the only conclusion he could come to on the evidence was that the respondents by their qualified acceptance of the rent after the expiry of the notice to quit never intended to create a fresh tenancy and never intended to waive their right of suing the appellant as a trespasser on the land. I am accordingly of the opinion that no question of waiver arises on the qualified acceptance of rent.

It is also argued that on the true construction of section 27(a) of the Ordinance, the appellant did not become a trespasser until an order of court granting immediate possession to the respondents was made in that section 27(a) enabled a tenant on the expiry of a notice to quit to hold over as a statutory tenant or alternatively as someone who is not a trespasser until a court had decided against him in an action for possession. This argument Choor Singh J. had rejected. He held relying on the cases of *Ida Fernandez* v. *Murugiah,*[3] and *K. S. Mohamed Ismail* v. *Choo Pin* [4] that it was clear law that if at the moment when the contractual tenancy is determined, the case falls within one of the exceptions set out in section 15, the landlord is not prevented from obtaining possession by the provisions of the Ordinance and therefore the tenant in such a case does not become a statutory tenant and becomes a trespasser when the contractual tenancy is determined.

Counsel for the appellant contended before us that the two cases relied on were not good law, or alternatively that they did not decide that such a person became a trespasser at the determination of the contractual tenancy. He cited the English case of *Cruise* v. *Terrell* [5] where the English Court of Appeal held that a landlord who re-entered on the expiration of the term in the absence of the tenant and subsequently obtained an order for possession on one of the grounds permitted by section 5 of the Increase of Rent and Mortgage Interest (Restriction) Act 1920 was liable for trespass on the ground that until an order for possession was obtained against the tenant, he stayed on, not as a trespasser, but as a statutory tenant — even against the will of the landlord. In *Cruise* v. *Terrell* the court affirmed the principle enunciated by an earlier decision of the same court in the case of *Remon* v. *City of London Real Property Co.*[6] that such a tenant i.e. a tenant who holds over against the will of the landlord was a person remaining in possession by virtue of the provisions of the Act.

In *Cruise* v. *Terrell* Warrington L.J. at page 672 said of such a tenant that "It is quite clear that a person holding over is not to be treated as a trespasser". Scrutton L.J. at page 673 said "until an order was obtained against him, a tenant stayed on not as a trespasser."

It is true that our Rent Ordinance is not in *pari materia* with the English Rent Acts and that the two English cases above referred to dealt with the effect of section 15 of the English 1920 Act, in particular section 15(1), the material portions of which are:—

"A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act . . .".

It is also true that the 1920 Act does not define who are statutory tenants whereas section 27 of our Ordinance does so by providing as follows:—

"27. The following persons are statutory tenants under this Ordinance, namely:—

(a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such posssession by his landlord; and

(b) any sub-tenant becoming a statutory tenant under and by virtue of any of the provisions of this Ordinance."

However, this court in the case of *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.*[7] expressly affirmed the judgment of Thomson J. (as he then was) in *Ramasamy Pillai* v. *Meyappa Chettiar* [8] where at page 107 Thomson J. said:—

"I propose to deal with the question of construction in the light of the English authorities for, in my opinion, there is no substance in the argument that because the English Acts do not contain any definition of a statutory tenant as does section 15 of our Ordinance there is thereby some material difference between the law here and the law in England. It is true that the English Acts do not formally define a "statutory tenant" although the expression has been used by the English Courts for very many years. But when it is remembered that the English Acts only apply to dwelling houses and do not provide for any preliminary proceedings before a tribunal corresponding to our Rent Assessment Board, I can find no material difference between the provisions of our section 15 and section 15 of the English Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which deals with the position of a 'tenant who by virtue of the provisions of this Act retains possession of any dwelling house to which this Act applies'. I can see no material distinction between such a tenant and 'any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord'."

In *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd., supra,* Thomson L.P., with whose judgment the two other members of the court concurred, said at page 72:—

"In the case of *Ramasamy Pillai* v. *Meyappa Chettiar, supra,* I expressed the view that for reasons which I do not propose to repeat here there is no difference between a statutory tenant under our legislation and a statutory tenant under the English Rent Acts, and I have listened to nothing in the present case which creates any doubt in my mind as to the correctness of that view."

I am therefore of the opinion, adopting the expressions used by Warrington L.J. and Scrutton L.J., that the appellant, until Choor Singh J. made an order for possession against him, cannot be treated as a trespasser. Even if this point had not been considered judicially before I would have come to the same conclusion.

If it were otherwise the position would result that a tenant, whose contractual tenancy had been determined by his landlord who is seeking to obtain an order for possession under any of the grounds specified in section 15(1), would either have to run the risk of having to pay damages as a trespasser if the court is of the opinion that the landlord has made out a case under the section, or have to surrender possession to his landlord. I am of the opinion that section 27(a) ought not to be construed to produce such a result. At best section 27(a) is ambiguous and as it clearly cannot have been the intention of the Legislature by an Ordinance such as the Control of Rent Ordinance to enable landlords of controlled premises to harass tenants or to place tenants in the invidious position of having to suffer a pecuniary penalty by way of damages for the tort of trespass if they elected wrongly by holding over, I would construe it to include a tenant who holds over until a court subsequently decides that the landlord is entitled to an order for possession under one of the grounds specified in section 15(1).

The view I have taken that the appellant was not a trespasser until Choor Singh J. made an order for possession against him therefore renders it unnecessary for me to deal with the rest of the grounds of appeal.

The appellant accordingly succeeds in this appeal to the extent that I would set aside the order that the respondents are entitled to recover against the appellant *mesne profits* to be assessed by means of an enquiry before the registrar.

Tan Ah Tah F.J.: I agree.

Appeal allowed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

SYED AHMED AL-JUNIED & ORS. v. RESHTY

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) April 6, 1966]

[Singapore — Federal Court Civil Appeal No. 113 of 1964]

Landlord and Tenant — Controlled premises — Standard rent — Meaning of premises — Rent raised by agreement — No application made to Rent Conciliation